IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Shyam Lal & ors. Versus State of Rajasthan.

S.B. Criminal Miscellaneous Petition No.485/2000 against the order dated 28-6-2000 passed by the Additional Sessions Judge No.2, Jodhpur, in Criminal Revision No. 18/2000.

...

Date of Order: October 05, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Arun Ranga for Mr. D.N. Yadav, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners have assailed the order dated 28-6-2000 passed by the Additional Sessions Judge No.2, Jodhpur (for short, "the Revisional Court" hereinafter), whereby the Revisional Court dismissed the revision petition filed by the petitioners against the order dated 1-4-2000 passed by the Additional Chief Judicial Magistrate, Bilara (for short, "the trial Court" hereinafter) in Criminal Case No. 425/1999. By the order dated 1-4-2000, the trial Court dismissed the application filed by the petitioners challenging the jurisdiction of the court to try the

case.

I have heard learned counsel for the petitioners and the Public Prosecutor for the State. Carefully gone through the orders impugned passed by the trial Court as well as by the Revisional Court.

The facts and circumstances giving rise to this criminal miscellaneous petition are that complainant Smt. Kamli W/o petitioner No.1 Shyam Lal filed a complaint in the trial Court for the offences under Sections 323 and 498-A, IPC. The trial Court sent the complaint to the police for investigation under Section 156 (3) of the Code. The police, after investigation, filed the Challan against the petitioners before the trial Court for the offences under Sections 323 and 498-A, IPC. The petitioners filed an application before the trial Court challenging the jurisdiction of the trial Court. That application came to be dismissed by the trial Court by the order dated 1-4-2000 and the revision against that order came to be dismissed by the Revisional Court by the order dated 28-6-2000. Hence this criminal miscellaneous petition.

It is contended by the learned counsel for the petitioners that the Court at Bilara has no territorial jurisdiction as from the complaint filed by the complainant, no cause of action arose within the territorial jurisdiction of the Court at Bilara. Learned counsel has relied on the decisions of the

Supreme Court in Y. Abraham Ajith & ors. Vs. Inspector of Police, Chennai & Anr., 2004 (3) Crimes 227 (SC); Monaben Ketanbhai Shah & Anr. Vs. State of Gujarat & ors., 2004 (3) Crimes 231 (SC); and the decisions of this Court in Kishan Lal & Anr. Vs. State of Rajasthan, 2005 (2) Cr.L.R. (Raj.) 1439; and Dinesh Kumar Sharma & ors. Vs. State of Rajasthan & ors., 2006 (1) RLW 659.

In Y. Abraham Ajith & ors. Vs. Inspector of Police, Chennai & Anr. (supra), the Hon'ble Apex Court held that while considering the expression "cause of action", as defined in Halsbury Laws of England (Fourth Edition), wherein "cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of Action" has also been taken to mean that particular acton the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action. The Apex Court held that from the factual scenario disclosed by the complainant in the complaint petition, the inevitable conclusion is that no part of cause of action arose in Chennai and, therefore, the concerned magistrate

had no jurisdiction to deal with the matter. The proceedings were quashed and the complaint was ordered to be returned to the respondent No.2, who, if she so chooses, may file the same in the appropriate Court to be dealt with in accordance with law.

In Bhajahari Mondal Vs. State of West Bengal, AIR 1959 SC 8, the Hon'ble Supreme Court held that the defect of jurisdiction therefore could not be cured by Section 529 (e) of the Code of Criminal Procedure (Old). The Special Judge was consequently not a court of competent jurisdiction and the proceedings before him were null and ineffective. It was held that the conviction was, therefore, by a Court which had no jurisdiction to try the case against the appellant therein and the whole proceedings are null and void.

In Kishan Lal & Anr. Vs. State of Rajasthan (supra), this Court held that no cause of action arose in Pali district; no date has been given when she left Hospet and came Pali but it is clear that the act of cruelty and demand of dowry has been committed in Hospet, Karnataka. Marriage took place at Jodhpur and some dowry articles were also given at Jodhpur. When it was demanded and was refused, it was at Hospet, therefore, no cause of action arose in Pali district. The marriage did not take place in Pali district and no dowry articles were given in Pali district and no act of cruelty has been shown to have been committed in Pali district. Therefore, looking to the judgment of

the Hon'ble Apex Court in Y. Abraham Ajith's case, this Court held that the Police Station, Pali had no jurisdiction to investigate the matter since no offence has been committed in Pali district and, therefore, the FIR of Police Station, Mahila Thana was quashed; however, the S.H.O., Police Station Pali may send the FIR for investigation to the police station having jurisdiction.

In Dinesh Kumar Sharma & ors. Vs. State of Rajasthan (supra), this Court held that according to Section 177 of the Code, every offence shall be ordinarily be inquired into and tried by the Court within whose local jurisdiction it was committed. The Court held that a bare perusal of the complaint filed by the respondent No.2 clearly reveals that all the acts of cruelty and the act of criminal breach of trust were committed at Gwalior in Madhya Pradesh. Not a single actof cruelty is alleged to have been committed at Jaipur and, therefore, the Court at Jaipur had no jurisdiction to try the case.

In the instant case, from a bare perusal of the complaint itself, it appears that the petitioners were the residents of Bakaliya, tehsil Bilara, but at the time of filing the complaint, they were residing at Babulal Danga's well, Tiwari, tehsil Osiya, district Jodhpur. In her police statement, complainant Smt. Kamla stated that her marriage took place with petitioner Shyam Lal R/o Bakaliya Badi, tehsil Bilara, district Jodhpur but thereafter her husband and other members

of in-laws started doing work on the wells near Tiwari, tehsil Osiyan, district Jodhpur. In the list of dowry articles produced by petitioner Shyam Lal on 3-11-1999, the present address of petitioner Shyam Lal has been shown at Tiwari, tehsil Osiya, district Jodhpur. After marriage, the complainant started living at Tiwari where her husband and in-laws members started doing agricultural work in the field situated nearby Tiwari. In this view of the matter, it is evident that the the cause of action has arisen at Tiwari, tehsil Osiyan and not at the Bakaliya, tehsil Bilara, district Jodhpur. Since cause of action has not arisen within the territorial jurisdiction of the Court at Bilara, therefore, the court at Bilara is having no territorial jurisdiction to entertain the complaint.

Consequently, the criminal miscellaneous petition is allowed. The orders dated 1-4-2000 and 28-6-2000 passed by the trial Court and the Revisional Court respectively, are set aside and it is held that the Court at Bilara has no territorial jurisdiction to entertain and try the case. However, the complainant is free to initiate criminal proceedings against the petitioners in the competent Court at Osiyan, district Jodhpur.

(H.R. PANWAR), J.

mcs